

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS CORP.)	File No. BPCT-940630KG
For Construction Permit for)	
a New Television Station to)	
Operate on Channel 51,)	
Reading, Pennsylvania)	

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Before the
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Washington, D.C. 20554

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Reading, Pennsylvania)	

Room TWA-363
Federal Communications
Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Friday,
June 23, 2000

The parties met, pursuant to the notice of the
Judge, at 11:04 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL
Judge

APPEARANCES:

Heritage Reporting Corporation
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APPEARANCES (Continued):

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Commission:

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2571

E X H I B I T S

IDENTIFIED

RECEIVED

REJECTED

Reading Broadcasting:

No. 77

2573

2573

Enforcement Bureau:

No. 1

2575

P R O C E E D I N G S

(11:04 a.m.)

JUDGE SIPPEL: Good morning. Let me take the appearances. Reading Broadcasting?

MR. HUTTON: Thomas Hutton for Reading Broadcasting.

JUDGE SIPPEL: And Adams Communications?

MR. COLE: Harry Cole for Adams Communications Corporation.

JUDGE SIPPEL: And the Enforcement Bureau?

MR. SHOOK: James Shook.

JUDGE SIPPEL: I have several -- two documents that have been placed before me, and I know exactly what they relate to. Why don't we start with the item from Brown, Finn, Nietert (phonetic), dated September 6, 1991. That is to be marked as a Reading Exhibit. Is that correct?

MR. HUTTON: Yes, sir.

JUDGE SIPPEL: Is there going to be any objection to it?

MR. COLE: None, Your Honor, from here.

JUDGE SIPPEL: According to my count -- let me see, what is my count? This should be Reading No. 77. Is that correct?

MR. HUTTON: That's correct, sir.

JUDGE SIPPEL: All right. It is a -- well, why

1 don't we mark it as Reading Exhibit 77 for identification.

2 (The document referred to was
3 marked for identification as
4 Reading Exhibit No. 77.)

5 JUDGE SIPPEL: And why don't you describe it for
6 the record and then move it in?

7 MR. HUTTON: Thank you. It is a letter dated and
8 Bates-stamped September 6, 1991. The signatory is Eric S.
9 Kravetz and the addressee is Donna R. Circe (phonetic),
10 Secretary of the FCC. And it is a three-page document. You
11 had asked me to fax a copy to Mr. Kravetz and ask him if
12 this was the entire amendment. And Mr. Kravetz confirmed
13 that to the best of his recollection, this is the entire
14 amendment.

15 JUDGE SIPPEL: Is there any objection to receiving
16 it into evidence?

17 MR. COLE: None, Your Honor.

18 MR. SHOOK: None.

19 JUDGE SIPPEL: Then Reading Exhibit 77 for
20 identification is received in evidence as Reading
21 Exhibit 77.

22 (The document referred to,
23 previously identified as
24 Reading Exhibit No. 77, was
25 received in evidence.)

1 JUDGE SIPPEL: Thank you. And the reporter has
2 copies. Is that correct?

3 MR. HUTTON: That's correct.

4 JUDGE SIPPEL: Okay. The next item is a document
5 marked as Enforcement Bureau Exhibit 1. And Mr. Shook,
6 would you address that, please?

7 MR. SHOOK: Yes, sir. It is an 11-page document.
8 It bears the heading of Reading Broadcasting, Inc. It bears
9 the date of October 8, 1998. It is addressed to Ms. Ann
10 Gaulke, Esquire, Vice President, Affiliate Relations,
11 Telemundo Network, Inc. It is signed -- it appears to be
12 signed by Michael L. Parker, President. And this is a
13 substituted Enforcement Bureau exhibit. I had distributed
14 one previously on Wednesday of this week at your request. I
15 have redone it to include the information that now appears
16 on pages 6, 7, 8, and carries over to page 9, dealing with
17 the renewal of WTVE license.

18 Otherwise, it is the same as the exhibit that had
19 been distributed previously. I have received from the court
20 reporter the old copies. So the court reporter now has the
21 new copies and Your Honor and everybody else has the new
22 copies as well. And at this time, I am simply asking this
23 to be marked for identification. I will not seek to move it
24 into evidence until after Mr. Parker has had an opportunity
25 to testify about it.

1 JUDGE SIPPEL: All right. Well, the reporter will
2 so mark that document as a Bureau Exhibit No. 1 for
3 identification, and we'll insert it in the record in that
4 form. We will wait to go further with it when Mr. Parker
5 comes back for his next engagement.

6 (The document referred to was
7 marked for identification as
8 Bureau Exhibit No. 1.)

9 JUDGE SIPPEL: That takes care of the documents,
10 then. Is that correct?

11 MR. HUTTON: I just had one question to raise.

12 JUDGE SIPPEL: Yes, sir.

13 MR. HUTTON: Our notes indicate that Reading
14 Exhibits 57 through 60 were received, but I was hoping we
15 could confirm that.

16 JUDGE SIPPEL: Now Reading -- what are these,
17 Reading Exhibits --

18 MR. HUTTON: Fifty-seven through 60.

19 JUDGE SIPPEL: Fifty-seven through 60. Oh, yes.
20 According to my chart, they have been received, all on June
21 19th.

22 MR. HUTTON: Thank you.

23 MR. COLE: Your Honor, could I just inquire as to
24 what they are, because I don't have my list with me.

25 JUDGE SIPPEL: Sure. Fifty-seven is Mr. Gilbert's

1 letter dated April 22, 1999, to Anne Swanson. Fifty-eight
2 is Anne Swanson's letter dated May 6, 1999, to Mr. Pecaro.
3 Fifty-nine is Ms. Anne Swanson's letter dated May 11, 1999,
4 to Ms. Gaulke. And Reading 60 is Ms. Swanson's letter dated
5 May 19, 1999, to Ms. Gaulke.

6 MR. COLE: Thank you.

7 JUDGE SIPPEL: All right. Now, I was going to --
8 down my list, and then if anybody has anything more to bring
9 up, we'll do it. But all of my things are essentially
10 administrative. I granted your motion with respect to the
11 July 17th day or the motion to enlarge issues. You got my
12 order, I take it.

13 MR. HUTTON: I did. Thank you.

14 JUDGE SIPPEL: Okay. What I'm going to do in
15 light of my schedule is I'm going to set opposition and
16 reply dates that would be a little bit later than the ten
17 and the five days authorized -- July 31 on the opposition
18 and August 7th on the reply. And I will set -- and I will
19 get that contained in an order.

20 Now, the question I have here for myself is the
21 redacted Reading Exhibit 52 that Mr. Shook was going to take
22 care of. What I would like to do so that myself and others
23 don't lose track of this would be to set down a date of July
24 17th for that to be moved in. Is that -- now, the reason I
25 picked that date is because it is the same date that

1 Mr. Hutton thought that he would have ample time to prepare
2 his motion.

3 Is there anything in your schedule that would
4 interfere with that date, Mr. Shook?

5 MR. SHOOK: The only thing that could possibly
6 interfere with it would be if there was some glitch in our
7 getting the transcripts. Otherwise, I don't see that there
8 would be a problem.

9 JUDGE SIPPEL: Well, I could make it subject to
10 that. But I would like to include that in an order,
11 primarily so that I can just keep track of it.

12 MR. SHOOK: That would make sense. It would be
13 easier for everybody if it was the same date.

14 JUDGE SIPPEL: Yes, okay. All right. Then I will
15 set that down in the order also, that July 17th will be the
16 date that we will expect the redacted -- and mechanically,
17 how you can proceed on that, I talked to my legal tech,
18 Sheila Parker this morning about it. And if you just file
19 the motion in the normal course as you normally would -- and
20 I'm assuming it can be a consent motion or we can let it lie
21 in the record for a while, for a couple of days until you
22 get a response to it.

23 But in any event, if you give the original -- or
24 the original and two -- actually, it is just copies. But if
25 you get it filed with your motion or hand delivered to my

1 office, a copy of the motion with the two copies that you
2 intend to have put into the record plus a third copy for
3 myself, Ms. Parker will take care of the logistics to either
4 get it over to the reporter, or if we then have the volumes
5 back from the reporter, she will insert it. But we'll be
6 the focal point for that. And that's true of any other
7 exhibits that should come in by paper motion after today.

8 So, all right, that's July 17th. Okay. Now, do
9 we have a date for Mr. Parker's return?

10 MR. HUTTON: I have tried to reach him a couple of
11 different times or left messages for him a couple of
12 different times, and I have not heard back from him. And
13 therefore my suggestion is that we simply set a date in late
14 July presumably, and I'll tell him that that is when he is
15 supposed to be here. And if there is a problem with that
16 date, I will take the responsibility of working with
17 everyone to select a new date and clearing it with you.

18 JUDGE SIPPEL: Well, I don't have any problem with
19 that, but I wanted to convey to him that it's a -- I'm
20 looking at it as a firm date. He is going to have to have a
21 very, very good reason as to why it would be changed once we
22 all agree to it here. That's all. I'd like to --

23 MR. HUTTON: Well, without having spoken to him, I
24 don't know what his schedule is.

25 JUDGE SIPPEL: Well, I know. But you can convey

1 that to him.

2 MR. HUTTON: I will.

3 JUDGE SIPPEL: He might have to change his
4 schedule to accommodate this as opposed to us doing it for
5 him.

6 MR. HUTTON: I certainly agree with that.

7 JUDGE SIPPEL: Depending on, obviously, the matter
8 that we are talking about. Well, let's pick a date, then.
9 Can we do it the week of the 17th or early the week of the
10 24th?

11 MR. HUTTON: I was going to suggest the 25th.

12 JUDGE SIPPEL: The 25th would be a Tuesday of that
13 week. Does anybody have any problem with that?

14 MR. COLE: None, Your Honor.

15 MR. SHOOK: It's okay.

16 JUDGE SIPPEL: It's okay with you? Well, why
17 don't we set it down for July 25th at 10:00 a.m.? And whose
18 witness is -- who is calling him as a witness? Is this the
19 Bureau's calling -- Mr. Shook, you're calling him as a
20 witness?

21 MR. SHOOK: I suppose technically I would be
22 calling him as an adverse witness.

23 JUDGE SIPPEL: All right. Now, would there be any
24 consideration given to Mr. Parker submitting his version of
25 a written testimony with respect to that letter before you

1 cross-examined him?

2 MR. SHOOK: If he wanted to do that, I wouldn't
3 have a problem with it. It's more work for Tom and them.
4 But basically it's up to them. If they want to do it, it's
5 okay with me.

6 MR. HUTTON: I wouldn't expect to do written
7 testimony on this. I guess I would like to reserve the
8 opportunity to do direct questioning to set the framework of
9 what this letter is.

10 JUDGE SIPPEL: Mr. Cole, do you have anything you
11 want to say about that?

12 MR. COLE: I feel much like Mr. Shook. I have
13 nothing to add.

14 JUDGE SIPPEL: Nothing to add. Well, I'm not
15 going to put it -- certainly, it is not going to be an
16 obligation. But yeah, I would -- that's the procedure that
17 I would like to follow. I would like Mr. Hutton to put him
18 on the stand as a continuation of Mr. Parker's case -- a
19 brief introduction as to the document. He can testify in
20 general in terms of what the circumstances were with respect
21 to the document, and then it will be your witness to cross-
22 examine.

23 MR. SHOOK: That's fine.

24 JUDGE SIPPEL: Either way, you get to cross-
25 examine him, so --

1 MR. SHOOK: It just may shorten the number of
2 questions that I have to ask him.

3 JUDGE SIPPEL: Well, I'm hoping it will, and I
4 think it just sets the stage, I think, in the best way we
5 can. Okay. Then that will be the 25th unless we hear from
6 Mr. Hutton otherwise. And that's -- you know, obviously the
7 closer we get to the 25th, the less likely he is going to
8 get a chance to change the date. So if there's anything to
9 come up, it had better be something very important.

10 All right. Then that takes care of Mr. Parker.
11 I'm going to save the dates on proposed findings and replied
12 findings until the end, if I can. I've got a couple of
13 things on exhibits, and these are -- we've already handled
14 the Norwell question, and that's Reading Exhibit 77 now.
15 Reading Exhibit 43 was the Fickinger deposition. I just
16 don't have a listing on my log that there was any action
17 taken on it, but I do recall that we talked about that. And
18 since Mr. Fickinger had testified, I'm not even sure if you
19 tried to move it into evidence. But it was clear that it
20 was not going to be received in evidence.

21 MR. HUTTON: I did try to move it in after he had
22 testified. If you're still open to it, I would move again.
23 I never like to give up, as you know.

24 JUDGE SIPPEL: I just -- I realize that. I just
25 have a space in my log, that's really all that I -- that's

1 all this was about.

2 MR. HUTTON: To my knowledge, it has not been
3 received, and to my knowledge, your ruling was that it was
4 not going to be received.

5 JUDGE SIPPEL: Well, actually, I didn't know if I
6 had actually ruled on it or whether we just kind of said
7 that, well, you know -- anyway, okay, let me come back to
8 that, then. Reading Exhibit 43, in case there's any
9 question -- six months or a year from now particularly, when
10 I think about these things -- is the deposition of Mr. Wayne
11 Fickinger. It was marked for identification on June 12. My
12 recollection is that it was rejected on June 21st, but I
13 just didn't have a notation in my log. I'm going to treat
14 this as having been rejected as an exhibit on June 21st.
15 And again, I take it -- I think I have got June 21st and/or
16 June 23rd. I think it was rejected twice. We're going to
17 nail it down.

18 MR. HUTTON: Third time is a charm.

19 JUDGE SIPPEL: Well, that's today, June 23rd. We
20 don't need that. Well, yes, I will put it in. I'll put it
21 in my log that way. This is Reading Exhibit No. 43, twice
22 rejected.

23 Okay. Now I have -- Reading Exhibit 52, we talked
24 about that. Bureau Exhibit 1, we talked about that. What
25 about the stipulation regarding the testimony of the FCC

1 staff members?

2 MR. COLE: Your Honor, I'm waiting to hear from
3 Mr. Hutton if he has any problems with it. Mr. Shook has
4 reviewed a second or third draft and said that -- indicated
5 no problems. Wednesday afternoon I faxed a copy of the
6 rerevised version to Mr. Hutton.

7 JUDGE SIPPEL: Mr. Hutton?

8 MR. HUTTON: To be honest with you, I haven't had
9 a chance to focus on it. I did review it when it came in.
10 I did have problems with it, but I haven't had a chance to
11 confer with Mr. Southard and formulate a definitive
12 position. What I would ask is that we be allowed to respond
13 in writing.

14 JUDGE SIPPEL: Well, that doesn't -- if that's how
15 you want to proceed on it, maybe it will -- it very well may
16 initiate another prehearing conference, a posthearing
17 conference.

18 MR. SHOOK: Well, it may also initiate having
19 those two people appear as witnesses.

20 JUDGE SIPPEL: That would be the purpose of the
21 conference, to decide whether or not we need them.

22 MR. COLE: Your Honor, if I might suggest to Mr.
23 Hutton that rather than respond in writing, you may just
24 want to call up Mr. Shook because Mr. Shook is the one who
25 apparently has spoken with the witnesses and conferred with

1 the witnesses as to the content of the stipulation. So if
2 Mr. Hutton has questions as to whether this is accurate or
3 whether there could be some play in what they would say, you
4 know, he can write to me all he wants. But I have not
5 spoken with the witnesses in connection with the preparation
6 of the stipulation.

7 MR. HUTTON: Well, my concern had more to do with
8 relevance.

9 JUDGE SIPPEL: Well, you know, we could go down
10 that road. But I'll tell you right up front here that I'm
11 inclined to be pretty generous as far as relevance goes on
12 this. In terms of the weight, in terms of how this is dealt
13 with in proposed findings as well as findings, is something
14 else again. But to leave this out of the record because of
15 a relevance objection is going to be -- you've got a slim
16 chance of doing that.

17 Wait a minute. We just lost Mr. Hutton's
18 microphone.

19 (Pause)

20 MR. HUTTON: Your Honor, I think there's a -- you
21 know, I got hammered pretty good on whether or not I was
22 dilatory. And I think the same issue comes up here. This
23 stipulation, to my knowledge, has supposedly been in the
24 works for at least six weeks and probably more like eight or
25 ten weeks. And I didn't get it until Wednesday afternoon,

1 didn't even see a draft. So I think procedurally there's
2 been, I guess, a lack of diligence, I think. And I just
3 don't see the need for any testimony from the processing
4 staff as to how the application was processed.

5 The issues behind a misrepresentation, lack of
6 candor issue are, did the applicant make a false statement
7 or withhold material information, and b) was there intent on
8 the part of the applicant to deceive the Commission. And
9 how the processing staff handled the paperwork before it is
10 not germane to that issue.

11 JUDGE SIPPEL: All right. Let's set -- who wants
12 to address this first?

13 MR. SHOOK: Your Honor, I can. The point of the
14 stipulation is really to get what it was that the staff had
15 asked for. That is really the entire point of the
16 stipulation. I mean, the rest of it is, I think, subject
17 to -- or it really is taken care of with respect to evidence
18 that has already been received in terms of the fact that the
19 amendment was submitted, the amendment says what it says,
20 and the staff granted the application less than two days
21 after the amendment arrived. So one can draw whatever
22 inferences one wants to draw from that.

23 But the point of the stipulation, really, is to
24 put that on paper as opposed to having them sit there and
25 testify what it was that they asked for.

1 MR. COLE: And Your Honor, if I could, as far as
2 the state-of-mind argument is concerned, this is one
3 situation in which prior to a submission by Mr. Parker,
4 there was some interaction between either Mr. Parker or
5 representatives of Mr. Parker and the staff. In other
6 words, in the applications, for example, in Norwell or
7 Reading, Mr. Parker prepared his applications, filed them,
8 and there was no interaction with the staff. The staff
9 granted them and that was that.

10 In Dallas, on the other hand, we filed the
11 application with the same essential language describing his
12 previous applications, and the staff asked him a question
13 about it. And he then prepared an amendment and filed the
14 amendment in light of whatever communications had come from
15 the staff. And I think the existence of those
16 communications and the staff's take on what was said during
17 those communications is certainly relevant to Mr. Parker's
18 state of mind when he prepared the amendment and filed it.

19 MR. HUTTON: Your Honor, I think that
20 mischaracterizes the testimony rather egregiously. As I
21 recall --

22 JUDGE SIPPEL: Which one, from what Mr. Shook
23 said?

24 MR. HUTTON: From what Mr. Cole said. From what I
25 recall --

1 JUDGE SIPPEL: Do you agree with Mr. Shook,
2 though? Do you agree with Mr. Shook? I mean --

3 MR. HUTTON: Well, I understand what he's saying,
4 but I still disagree that the testimony of the staff would
5 be appropriate. As I understand --

6 JUDGE SIPPEL: But has Mr. Shook stated accurately
7 that really he's just looking to get the stipulation in to
8 show for the record what the staff had asked Mr. Parker?

9 MR. HUTTON: Well, the stipulation goes beyond
10 that. And I would object to anything -- certainly object to
11 anything going beyond what he described as the purpose of
12 the stipulation.

13 JUDGE SIPPEL: Which was defined to put on the
14 record what the staff had asked for.

15 MR. HUTTON: But again, I think what you have to
16 realize -- I believe it was Mr. Kravetz's testimony that he
17 thought he had been contacted by the staff directly with
18 respect to what they asked for. And Mr. Kravetz acted as a
19 filter in terms of preparing the amendment in response to
20 the inquiry from the staff. So therefore, the supposed
21 interaction between Mr. Parker and the staff that Mr. Cole
22 stipulated is not shown in the record, to my knowledge.

23 JUDGE SIPPEL: What were you going to say with
24 respect to Mr. Cole's argument?

25 MR. HUTTON: Well, I just made that point, that he

1 claimed that there was a series of interactions between Mr.
2 Parker and the staff that I don't think the evidence
3 supports. As I said, I think the process was that Mr.
4 Kravetz spoke with the staff, found out what they were
5 asking for, spoke to either Mr. Parker or someone who worked
6 for Mr. Parker, and obtained information in response,
7 prepared an amendment based on that information, and then
8 had Mr. Parker sign the amendment.

9 So the so-called linkage of communications between
10 the staff and Mr. Parker directly doesn't exist other than
11 the amendment itself, which is in the record.

12 JUDGE SIPPEL: Well, Mr. Kravetz was acting as Mr.
13 Parker's agent.

14 MR. HUTTON: That's right. And Mr. Kravetz's
15 testimony stands on the record, and that -- I have no
16 objection to that. But to add to that, testimony about what
17 the staff did with the paperwork it received or why they
18 needed certain materials, I think is just beyond the scope
19 of the issue.

20 MR. SHOOK: I don't recall the stipulation going
21 into the staff's state of mind. My recollection of the
22 stipulation as it stands right now is that the staff made a
23 request, the staff received the amendment, the staff acted
24 on the amendment and the application. Basically, it really
25 doesn't do anything more than round out the picture. It is

1 certainly not the Bureau's intent to try to insert into the
2 record in any surreptitious way what the staff's state of
3 mind was. It's to get at what the staff asked for.

4 MR. HUTTON: We have Mr. Kravetz's testimony for
5 that.

6 JUDGE SIPPEL: Well, I realize that. But it
7 doesn't mean that we can't get the staff's view of the
8 facts, the recollection of the facts also. It is
9 information that comes from a witness -- witnesses, rather,
10 that were very much involved in the transaction that can
11 testify factually as to what happened. Now, the fact that
12 Mr. Kravetz also testified to the same thing doesn't negate
13 using the staff's evidence even though it's on the same
14 issue. I don't see that as being a basis to reject it.

15 MR. COLE: Your Honor, if I might be heard on
16 Mr. Hutton's characterization, I tried, and I apologize if I
17 was unsuccessful, but I tried in my preliminary remarks to
18 which Mr. Hutton has taken exception to make it clear that I
19 don't believe that the evidence is 100 percent clear as to
20 who the staff talked to. My recollection of Mr. Kravetz's
21 testimony -- and this is my recollection; the record will
22 obviously speak for itself -- is that Mr. Kravetz thought
23 that he had heard from either Mr. Parker or Ms. Hendrickson,
24 but he may have heard directly from the staff first. He
25 wasn't sure.

1 I believe Mr. Parker's testimony was along the
2 same lines, that he, Mr. Parker, may have heard from the
3 staff, or maybe he heard from Mr. Kravetz. He wasn't sure
4 either.

5 In any event, the important thing from my point of
6 view is that the staff called out to somebody on behalf of
7 Two if by Sea Broadcasting and said we need more
8 information, please get it to us. Mr. Parker was aware that
9 that communication had come in, whether it came in to Mr.
10 Kravetz, Ms. Hendrickson, Mr. Parker, or somebody else. And
11 Mr. Parker, in response to that request for information,
12 caused to be prepared and then signed an amendment, which is
13 now a matter of record.

14 I think it's important for the record to include
15 the fact that the staff did in fact reach out, whether it's
16 to Mr. Kravetz or Mr. Parker or whomsoever. And since it's
17 not clear from Parker's testimony or Mr. Kravetz's testimony
18 exactly who the staff reached out to, I think it's important
19 at least to have the staff acknowledge that it did in fact
20 reach out to somebody, and that's the purpose of this
21 amendment -- the stipulation rather.

22 JUDGE SIPPET: It sounds to me like -- well, what
23 I see the real -- if there is a real problem here, the real
24 problem would be that Mr. Hutton is not happy with how the
25 stipulation has been drafted, that it says more than he

1 thinks that the record might support, in which case I can
2 sympathize. I mean, he doesn't want to certainly stipulate
3 to something that's not -- that the record is not going to
4 support.

5 What we are trying to avoid is the need to bring
6 in two staff members to state something that's a very simple
7 thing to state, as proffered by Mr. Shook. And maybe the
8 thing to do would be to wait until the transcripts are
9 available so you can double-check the Parker/Kravetz
10 rendition of this from the transcripts.

11 But again, I don't see why that should have to be
12 brought into the stipulation. I haven't read the
13 stipulation, so I don't know. I mean, I am sort of talking
14 in the dark. Is it really a drafting problem, I mean a
15 drafting disagreement?

16 MR. SHOOK: Well, we're -- when I say we, I mean
17 myself and Mr. Cole -- are certainly in agreement at this
18 point that the stipulation accurately sets forth what
19 happened and is limited to matters which are relevant, as
20 opposed to having the staff's, you know, state of mind
21 explored in terms of, you know, what it was thinking when it
22 asked for the information that it asked for, what it was
23 thinking when it received that amendment, what it was
24 thinking when it granted the application. That's been taken
25 out.

1 Now, it may be that Mr. Hutton still reads, you
2 know, some of that thought -- maybe he believes, perhaps
3 rightfully so, that there is still some of that lingering in
4 the stipulation as it is now written. But from my
5 perspective, it was not, you know, my intent to try to
6 interject that into the record. It is simply to set forth
7 as factually as possible what the staff asked for, and then
8 the sequence of events that followed, and to have that
9 really do nothing more than round out the picture that we
10 already have from the evidence in the record.

11 JUDGE SIPPEL: Well, I think -- I mean, I don't
12 think it is going to get resolved here today. I think that
13 what I would be inclined to do would be to ask you to go
14 back and talk some more about it, give Mr. Hutton a little
15 more time to look at it and think about it and, you know,
16 file a stipulation in ten days or a status report. Maybe we
17 can just have another conference.

18 I'm very, very reluctant to bring two staffers in
19 here to testify about something that's going to be -- that
20 doesn't involve a state of mind, that really just involves a
21 very finite fact situation that there's going to be hardly
22 any reason to cross-examine them on.

23 MR. HUTTON: I don't see any need to cross-examine
24 them. I don't see any need to have, you know, any
25 additional proposed testimony. I will take another look at

1 the drafts that were sent to me. I have been very busy ever
2 since we got through here the other day. And I will take
3 another look at it and respond to Mr. Shook either -- well,
4 let's say by the end of next week.

5 JUDGE SIPPEL: By the end of next week. Where are
6 we now? We're on the 23rd. All right. Well, all right. I
7 will -- now, if it reaches a point where you absolutely are
8 not going to stipulate, you are not going to sign a
9 stipulation on this, then I want to be notified right away.
10 But let me set a date down for July 7th, which is a Friday,
11 a couple of days after the Fourth of July, for either filing
12 a stipulation or a status report as to why one can't be
13 filed. And we'll just have to take the next step from
14 there.

15 Does that give you enough time? Does that --

16 MR. SHOOK: I'm sure it is more than enough time.
17 As it is, I'm going to be, you know, out of the office the
18 5th, 6th, and 7th. So I trust that whatever difficulties
19 there may be are resolved prior to that time.

20 JUDGE SIPPEL: Well, Mr. --

21 MR. SHOOK: And if not --

22 JUDGE SIPPEL: Well, let me back off of that then.
23 Mr. Hutton said that he wanted till the end of next week.
24 Why don't I set -- that would be the 30th, a week from
25 today. Why don't I just set the 30th down as a date for a

1 report on this? And it can be just a one or two liner that
2 you've agreed on and something is going to come in, or that
3 you can't agree on, and I can set up another conference if
4 need be. Is that --

5 MR. SHOOK: Well, with the thought right now
6 possibly that the two staffers, if necessary, could also
7 appear on the 25th of July.

8 JUDGE SIPPEL: Well, that would be the next step,
9 yes. I mean, I was going to ask you that, too, if you would
10 alert them that there is a possibility, at least as of today
11 there is a possibility that we would want their testimony on
12 or about that date, either the 25th, the 24th, or the 26th.
13 All right?

14 MR. SHOOK: Thank you.

15 JUDGE SIPPEL: All right. So the first thing is
16 the 30th. June 30th, I want a report on the status of the
17 stipulation. Okay. And as far as the diligence argument is
18 concerned, again, this is not a diligence issue here. As I
19 say, if you need more time, time is not of the essence here.
20 It's the concept. You know, it's the agreement to this both
21 in principle and in terms of fact agreement. So we're not
22 being pressed by it. We're not being pushed by a date on
23 this.

24 Okay. Anyway, that takes care of the stipulation.
25 Now, the last thing that we're left with then is the

1 proposed findings and conclusion. And I know that there are
2 some -- I don't want to say extraneous, but some things
3 going on outside of the hearing that prompt some
4 consideration to setting these dates maybe later than they
5 ordinarily would be set.

6 Why don't we just go right to the heart of the
7 matter? Have you all talked about dates?

8 MR. SHOOK: No, Your Honor. And frankly, I was
9 hoping that even though you had mentioned before, you know,
10 your thought for setting dates today, that considering that
11 we do have another hearing date set up on the 25th, that
12 frankly, that we wait until that day with the conclusion of
13 the testimony, to set findings and conclusions at that
14 point.

15 I recognize that I'm being very generous with
16 myself and the others in terms of the amount of time
17 involved here. But I think, given the circumstances of this
18 case, that that makes more sense than to try to set a date
19 now with the number of things that we have going on between
20 now and the 25th, including the possible submission of
21 another motion to enlarge from Reading.

22 JUDGE SIPPEL: Well, that motion is going to come
23 in. But as I told Mr. -- I've said that before, and I'll
24 say it again, that that motion, even if it's granted, is not
25 going to hold back dates for proposed findings. We can

1 always supplement findings, but I'm not going to slow
2 anything. I'm not going to put everything back on the shelf
3 because there's a motion to add issues.

4 MR. SHOOK: Well, recognizing that that motion
5 encompasses possibly an issue that we have not yet dealt
6 with here, the testimony to be taken on the 25th is tied in
7 with phase two.

8 JUDGE SIPPEL: That's true. That's true. I mean,
9 that's a different --

10 MR. SHOOK: So that was as much as anything the
11 reason for my, you know, thinking of not trying to set a
12 date until the 25th.

13 JUDGE SIPPEL: All right. What's your take on it,
14 Mr. Hutton?

15 MR. HUTTON: I don't always agree with Mr. Shook,
16 but in this case I certainly do. You know, I tend to agree
17 that we can start from the 25th and use that. We'll have a
18 better sense of where we are by then. So I would join
19 Mr. Shook in asking that we defer setting dates for the
20 briefing until we have concluded the phase two testimony.

21 JUDGE SIPPEL: All right. Mr. Cole?

22 MR. COLE: Your Honor, I hate to set a precedent,
23 but I have to agree with my colleagues, Mr. Hutton and
24 Mr. Shook, on this, with the additional observation that if
25 you were, as I think I heard you say, initially inclined to

1 be somewhat more generous in briefing deadlines, if you were
2 to establish the deadlines today, that gives you some wiggle
3 room. So if we decide not to set any dates today but decide
4 to set them on July 25, you can be less generous, if you're
5 so inclined, as of July 25 if you see there is reason to be
6 less generous at that point.

7 In other words, however much time you were going
8 to -- you might have been inclined to provide the parties as
9 of today, it can still be taken into account if you decide
10 -- if we ultimately set the dates on July 25.

11 MR. SHOOK: That thud you just heard was me
12 falling out of my chair, all three of us agreeing about
13 something.

14 MR. COLE: I thought it was Mr. Hutton dropping
15 the microphone.

16 JUDGE SIPPEL: Well, there was prompt agreement on
17 the appropriate garb for dress-down Friday. That was pretty
18 fast, too. We had a quick turnaround on that.

19 MR. SHOOK: Well, that's two in a row almost.

20 JUDGE SIPPEL: That's two in a row. Maybe we're
21 moving on something. All right. Well, I am going to go
22 along with that in principle. But I am going to set down in
23 this order on these dates that I expect that on or about --
24 I'm still setting a target date of on or about September 1st
25 for proposed findings. I must say it's not going to be a --

1 it will be a target date because I want the parties to
2 understand that I have finite intentions to get this thing
3 to a point where this case can be somehow or other resolved.
4 And I think pushing these dates into this never-never land
5 doesn't help people think that way.

6 But in the meantime, of course, if something very
7 significant comes up, I'm sure that I will hear that from
8 you. But yes, the answer to your question is we will make
9 definitive rulings right after Mr. Parker's -- right after
10 Mr. Parker's testimony. But that would be the date that I
11 would be -- that would be my starting date. On the 25th, I
12 would be thinking of around September the 1st. And I don't
13 see any reason why that one segment of testimony on the
14 25th, knowing what the document is that he's going to
15 testify to, why that should interfere with preparing the
16 proposed findings on all of the other issues in this case,
17 particularly going right back to the comparative issue.

18 I've warned the parties early on in this case that
19 they shouldn't let all of that stuff just sit up on the
20 shelf, thinking you are going to get it all done in 30 days.
21 So I'm expecting that there is going to be work being done
22 on this. But then again, there are other things happening
23 that I don't know about. So I should know about them,
24 except when they happen. I should know about them when they
25 happen.

1 All right. Then that's it, I guess. As far as
2 the record goes, the record is closed, with the exception of
3 the taking of the testimony of Mr. Parker on the 25th and
4 the receipt into evidence of the staff evidence, either by
5 way of stipulation or their testimony, and the cleanup items
6 that we talked about today that will come in. Other than
7 that, this case is in shape to go, to decide. And you know,
8 as I said, I do want to commend everybody for the effort.
9 There have been some hard things to do. There have been
10 short fuses that have been set on getting things done, and
11 on balance, things got done.

12 I've still got that motion, though, Mr. Hutton. I
13 haven't forgotten that.

14 MR. HUTTON: I understand.

15 JUDGE SIPPEL: You'll hear from me some more about
16 that. All right. We're in recess until the 25th of July at
17 10:00 a.m. Thank you very much.

18 (Whereupon, at 11:45 a.m., the hearing in the
19 above-entitled matter was adjourned until July 25, 2000, at
20 10:00 a.m.)

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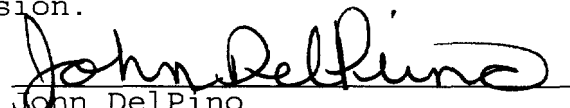
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HEARING DATE: June 23, 2000

LOCATION: Washington, DC

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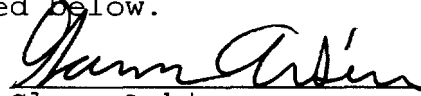
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